IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

PETITION NO.149 OF 2004

Re: Kamal S. Ruia ..Debtor.

Ex-parte:

SICOM Ltd. ..Petitioning Creditor.

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Mr.Kishore Jain i/b Mr.G.R.Mehta for the Petitioning Creditor.

Mr.V.L.Desai for the Debtor.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

15th February, 2005.

P.C. :

In Summary Suit 471 of 2002 an ex parte decree has been passed on 18th December, 2002 in the amount of Rs.95,25,221/- with further interest on the principal sum of Rs.45 lacs at the rate of 18.5% per annum. On the basis of the decree, an insolvency notice was taken out on 19th January, 2004. The Debtor took out a Motion for setting aside the insolvency notice which was dismissed by this Court on 3rd August, 2004. The matter was

carried in appeal. While dismissing the appeal, the Division Bench in its order dated 11th October, 2004 noted that the ex-parte decree holds the field as on date and merely because an application for setting it aside was pending, no case for discharge of the notice was made out. However, it is clarified that in the event that the ex parte decree is set aside, the Judgment Debtor is at liberty to take out a fresh Notice of Motion for discharge of the notice. Admittedly, the ex parte decree continues to hold the field. At this stage, the Petition has to be made absolute. However, the Judgment Debtor would be at liberty to move an application for annulment should he succeed in the Motion for setting aside the ex parte decree. The Petition is accordingly made absolute in terms of prayer clauses (a) and (b).